

1 KAREN P. HEWITT  
 2 United States Attorney  
 3 AARON B. CLARK  
 4 Assistant United States Attorney  
 5 California State Bar No. 239764  
 6 United States Attorney's Office  
 7 Federal Office Building  
 8 880 Front Street, Room 6293  
 9 San Diego, California 92101  
 10 Telephone: (619) 557-6787

NOV 15 2007

11 Attorneys for Plaintiff  
 12 UNITED STATES OF AMERICA

13  
 14 UNITED STATES DISTRICT COURT  
 15 SOUTHERN DISTRICT OF CALIFORNIA

07cr3122-DMS

16 UNITED STATES OF AMERICA, ) Magistrate Case No. 07MJ2490  
 17 Plaintiff, )  
 18 v. )  
 19 FLORENTINO FIGUEROA-SANCHEZ, )  
 20 Defendant. )

**STIPULATION OF FACT AND JOINT  
 MOTION FOR RELEASE OF  
 MATERIAL WITNESS(ES) AND  
 ORDER THEREON**

**(Pre-Indictment Fast-Track Program)**

21 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
 22 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and ;  
 23 Aaron B. Clark, Assistant United States Attorney, and defendant FLORENTINO FIGUEROA-  
 24 SANCHEZ, by and through and with the advice and consent of defense counsel, Michael E. Burke,  
 25 that:

26 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing  
 27 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
 28 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead  
 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count  
 of Inducing and Encouraging Illegal Aliens and Aiding and Abetting, in violation of 8 U.S.C.  
 § 1324(a)(1)(A)(iv) and (v)(II).

29 //

30 //

31 ABC:drh

F.F.S

1       2.    Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4       3.    Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before **November 16, 2007**.

6       4.    The material witness Miriam Barhona-Lopez, in this case:  
7           a.    Is an alien with no lawful right to enter or remain in the United States;  
8           b.    Entered or attempted to enter the United States illegally on or about  
9 October 17, 2007;

10          c.    Was found in a vehicle driven by defendant at the San Ysidro, California Port  
11 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that they were  
12 aliens with no lawful right to enter or remain in the United States;

13          d.    Was paying \$ 2,600 to others to be brought into the United States illegally  
14 and/or transported illegally to their destination therein; and,

15          e.    May be released and remanded immediately to the Department of Homeland  
16 Security for return to her country of origin.

17       5.    After the material witness is ordered released by the Court pursuant to this stipulation  
18 and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or  
19 thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21           a.    The stipulated facts set forth in paragraph 4 above shall be admitted as  
22 substantive evidence;

23           b.    The United States may elicit hearsay testimony from arresting agents  
24 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
26 of (an) unavailable witness(es); and,

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
2 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted  
3 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant  
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
7 further that defendant has discussed the terms of this stipulation and joint motion with defense  
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
10 immediate release and remand of the above-named material witness(es) to the Department of  
11 Homeland Security for return to their country of origin.

12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

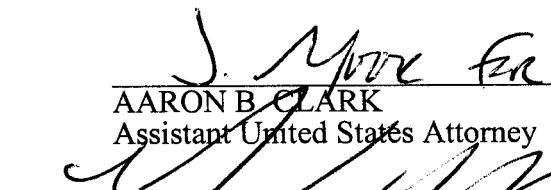
14 KAREN P. HEWITT  
United States Attorney

15  
16 Dated: 11/15/07.

  
AARON B. CLARK

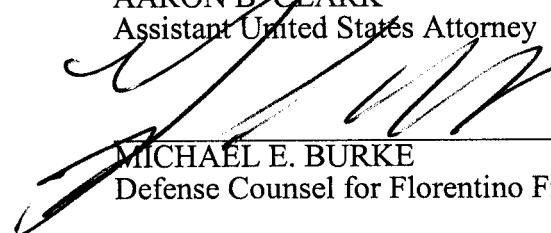
Assistant United States Attorney

17  
18 Dated: 11/9/07.

  
MICHAEL E. BURKE

Defense Counsel for Florentino Figueroa-Sanchez

21 Dated: 11/09/07.

  
F. F. S

FLORENTINO FIGUEROA-SANCHEZ  
Defendant

## ORDER

2 Upon joint application and motion of the parties, and for good cause shown,  
3 **THE STIPULATION** is admitted into evidence, and,  
4 **IT IS ORDERED** that the above-named material witness(es) be released and remanded  
5 forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 11/15/

U. M. Koenig  
United States Magistrate Judge